

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE TRUSTEES OF THE TILE,
MARBLE & TERRAZANO
INSURANCE TRUST FUND, et al.,

Civil No. 08-12501
HONORABLE SEAN F. COX

Plaintiffs,

v.

INTERNATIONAL TILE f/k/a
SAMMY'S TILE CO., et al.,

Defendants.

OPINION & ORDER
GRANTING MOTION FOR DEFAULT JUDGMENT

This action is currently before the Court on the Plaintiff's Motion for Default Judgment.

For the reasons set forth below, the motion shall be **GRANTED**.

On June 11, 2008, Plaintiff filed this action, pursuant to Section 101 of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 186, and the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1132 and 1145, seeking payment of unpaid and unaudited indebtedness due under the fringe benefit provisions of the collective bargaining agreement between Plaintiff and Defendant. Plaintiff seeks a Court order directing the Defendants to submit to an audit as to all periods during which contribution reports have not been filed and to which an audit has not been performed, and payment of those monies as an audit would reveal is owed.

Plaintiff also requests interest on any amount determined owing by an audit at 12% per annum from the due date of the contributions, liquidated damages, the costs of the audit, and

statutory attorney fees pursuant to 29 U.S.C. § 1132(g)(2). Jurisdiction is proper under 28 U.S.C. § 1331, because the case concerns rights granted under federal statutes. Defendant received service of process on June 21, 2008, and failed to file an answer within the required 20 day period.

A Clerk's entry of Default was entered on July 25, 2008. In support of its Motion for Default Judgment, Plaintiff has argued that Defendants are corporations are incapable of being in violation of the requirements for Non-Majority, Non-Incompetence, and Non-Military Status, and that, to the best of Plaintiff's knowledge, individual defendant Samuel Herman is of majority age, not incompetent, and not currently on military status. No responsive pleadings, nor objection to this motion for default judgment, have been filed by Defendants to date.

This Court held a hearing on the Plaintiff's Motion for Default Judgment on January 22, 2009. Although the Plaintiff appeared for the hearing, no persons on behalf of Defendants, or opposing the Plaintiff's motion, appeared at the hearing. In addition, no written opposition to the Plaintiff's motion has been filed by any party.

Having reviewed the Motion, the Court is satisfied that the Plaintiff is entitled to entry of a default judgment in this matter. IT IS THEREFORE ORDERED that the Plaintiff's Motion for Entry of Default Judgment be GRANTED.

Dated: January 23, 2009

S/ Sean F. Cox
Sean F. Cox
United States District Court Judge

PROOF OF SERVICE

The undersigned certifies that the foregoing order was served upon counsel of record via the Court's ECF System and/or U. S. Mail on January 23, 2009.

s/Jennifer Hernandez
Case Manager to
District Judge Sean F. Cox